



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

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December 17, 2012

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Lonnie Johnson**
Tax Registry No. 925729
28 Precinct
Disciplinary Case No. 2010-1699

The above named member of the service appeared before Assistant Deputy Commissioner Claudia Daniels-DePeyster on March 29, 2012 and was charged with the following:

DISCIPLINARY CASE NO. 2010-1699

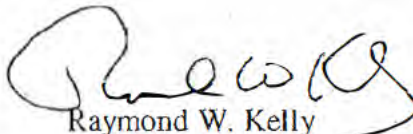
1. Police Officer Lonnie Johnson, while assigned to the 28th Precinct, while off-duty, on or about and between December 15, 2009 and December 22, 2009, did wrongfully and without just cause engage in off duty employment without authority or permission to do so, in that said Police Officer did take photographs in exchange for money in the vicinity of Rockefeller Center without obtaining an approved Off-Duty Employment application.

P.G. 205-40, Pages 1 & 2, Paragraphs 1 & 2

OFF-DUTY EMPLOYMENT

In a Memorandum dated July 12, 2012, Assistant Deputy Commissioner Claudia Daniels DePeyster found Respondent Johnson Guilty of Specification No. 1, in Disciplinary Case No. 2010 1699. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

With consideration of all evidence and the totality of circumstances, in addition to noting Respondent Johnson's otherwise good service record with the Department, the disciplinary penalty shall be reduced, to a forfeiture of ten (10) Vacation days.


Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

July 12, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Lonnie Johnson
Tax Registry No. 925729
28 Precinct
Disciplinary Case No. 2010-1699

The above-named member of the Department appeared before the Court on March 29, 2012, charged with the following:

1. Police Officer Lonnie Johnson, while assigned to the 28th Precinct, while off-duty, on or about and between December 15, 2009 and December 22, 2009, did wrongfully and without just cause engage in off-duty employment without authority or permission to do so, in that said Police Officer did take photographs in exchange for money in the vicinity of Rockefeller Center without obtaining an approved Off-Duty Employment application.

P.G. 205-40, Pages 1 & 2, Paragraphs 1 & 2 -- OFF-DUTY EMPLOYMENT

The Department was represented by Jamie Moran, Esq., and Rita Bieniewicz Esq., Department Advocate's Office and Respondent was represented by Michael Martinez, Esq.

Respondent, through his counsel, entered a plea of Guilty to the subject charge and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent, a 12-year member of the Department, is currently on full-duty status and assigned to the 28 Precinct as the Property Control Specialist. Prior to that, he performed patrol duties and worked in Operation Impact within the confines of the 28 Precinct. He has never been on modified assignment in his career and has never been the subject of any prior charges and specifications. In his career, he has made over one hundred arrests.¹

Respondent's main hobby was photography and he stated that he has been into photography, "All my life, I love to take pictures, I love art." During December 2009, Respondent's brother asked him to come to Rockefeller Center and do some freelance photography, which Respondent thought would be harmless. Respondent and his brother took pictures and then they showed them [displayed on his camera] to people. If a person liked the photograph, that person could buy it from Respondent. Respondent explained that taking photographs at Rockefeller Center was good around that time of year because the Christmas tree was up and it was a great place for tourists and people to come with their families. Respondent did not work for any group; it was just Respondent and his brother taking pictures.

Respondent stated that he took pictures for approximately two to three weeks during December 2009, spending two to three hours in the freezing cold. In this time period, he stated that he, "Probably made about three or four hundred dollars." He did

¹ According to his personnel records, Respondent, to date, has 119 career arrests.

not file an Off Duty Employment Application with the Department before taking pictures and earning money because, "It was more of a hobby and something I love to do. Art I thought was free and it was really nothing. It was very innocent, so I didn't think that I had to say that I'm taking photos. And people knew at the precinct that I really like to take photos, so it wasn't really a big deal to me."

Respondent acknowledged that, at some point, it was explained to him that he had to file an application for what he was doing. He was made aware of this after the holiday season was over. Respondent was informed by the Inspections Unit that he did not file for off-duty employment and that they were preparing charges against him. Respondent stated that he immediately inquired from them how he would file off-duty employment paperwork for this type of work. He was advised to put it down as his own business and that was when Respondent decided to start and make his own business.

Subsequently, Respondent submitted an Off Duty Employment Application and it was approved. Respondent stated that his application for anything pertaining to photography is current and still in effect to this day. He continues to freelance as a photographer.

During cross-examination, Respondent agreed that, at the time of these events, he was a police officer for approximately ten years. He also acknowledged that he did not apply for off duty employment authorization before the 2009 holiday season. He was aware that there was a process that needed to be followed in order to engage in off-duty employment. Respondent acknowledged that at his official Department interview on January 15, 2010, he admitted to also taking photographs in 2008 and when asked in that interview how often he did this, he responded, "Some occasion[s], weekends maybe."

Respondent's brother, who is not a member of the service, was the one who asked Respondent to come to Rockefeller Center and help him. His brother also explained to him that he could make some extra money by taking and selling photographs there. His brother had been engaged in the business of taking photographs before Respondent began helping him. Respondent sometimes collected the fee from individuals who he had photographed. Respondent had his own camera and he worked at Rockefeller Center at times without his brother being present. He sometimes shared the profits with his brother. Respondent acknowledged that he discussed the price of the photographs with individuals before taking the pictures. The prices would depend on the size of the photographs, how many copies they wanted, and if they wanted frames. The prices ranged from \$10 to \$15 and people haggled.

Respondent stated that "helpers" did not collect money for him or for his photographs, but instead they found and brought over to him people who were interested in having their photographs taken. He said that these helpers are just out there and that most of them were young guys from college that were just trying to get some holiday money. These helpers came out and looked for guys who take pictures. Respondent denied knowing any of these helpers personally. Respondent did not discuss photograph prices with the helpers; he discussed the prices with people who wanted to have photographs taken. Respondent acknowledged that most of the time he gave a percentage of the money that he earned for taking a photograph to the helper that brought a person to him. He stated that, "Yeah, I might give them two or three dollars for bringing that person to me, yes."

Respondent acknowledged that in December 2009, he worked at Rockefeller Center maybe two or three days, sometimes four days a week. He mostly did it when he was on vacation. He was on vacation in December 2009, but he did not remember exactly what days he was on vacation. In December 2009, Respondent performed day tours and he primarily worked at Rockefeller Center at night, when the lights were on. He acknowledged that he took photographs at Rockefeller Center on December 15, 17, 18, and 22, 2009. Respondent also acknowledged submitting an Off Duty Employment Application for the past holiday season.

Respondent agreed that he has since reviewed the Patrol Guide regarding off-duty employment and he knows that the amount of hours that he can engage in off-duty employment is limited by the Department, that the start time of the extra employment is regulated by the Department, and that certain activities are prohibited. When Respondent was asked if he learned, "That selling photographs such as taking photographs on the street is prohibited," he responded, "No...it's considered art, so they didn't say it was anything outside of that." Respondent acknowledged that the Patrol Guide section dealing with off-duty employment prohibits police officers from employment as a street peddler. When asked, "Did you tell any one of your supervisors at work about this activity you were doing?" He stated, "Well, they knew I took photos. I didn't have to tell anybody." Respondent stated that he did tell his co-workers that he was taking photographs at Rockefeller Center. When he was again asked if he told any of his supervisors, he replied, "Yes." Upon further questioning, Respondent stated that he only did this during the holiday season in December 2009.

PENALTY

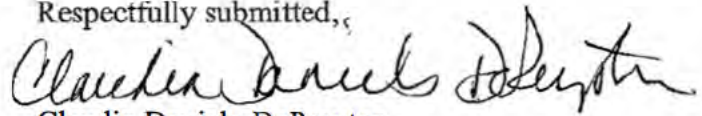
In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974).

Respondent was appointed to the Department on March 10, 2000. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has admitted to engaging in off-duty employment by taking photographs for money in the Rockefeller Center area on multiple occasions between December 15, 2009 and December 22, 2009 without prior Department approval. The Assistant Department Advocate asked for a penalty of the forfeiture of 13 vacation days. The Court agrees. In Disciplinary Case Nos. 80342/04 and 81100/05, signed March 6, 2006, a 12-year member of the Department with no prior disciplinary record, having pleaded Guilty, forfeits 15 vacation days for failing to obtain permission to maintain his off-duty security business. Respondent in that matter was initially approved to own a business, but he failed to renew the application annually.

Accordingly, it is recommended that Respondent forfeit 13 vacation days.

Respectfully submitted,


Claudia Daniels-DePeyster
Assistant Deputy Commissioner-Trials



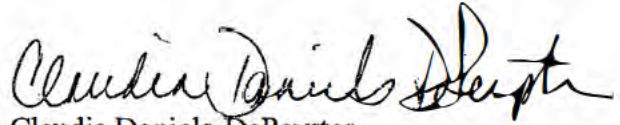
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER LONNIE JOHNSON
TAX REGISTRY NO. 925729
DISCIPLINARY CASE NO. 2010-1699

In 2009 and 2010, Respondent received an overall rating of 3.5 "Above Competent" on his annual performance evaluations. In 2011, he received a rating of 4.5 "Above Highly Competent." Respondent has not received any medals in his career to date.

In over 12 years of service, [REDACTED]
[REDACTED]. Respondent has no prior formal disciplinary record.

For your consideration.



Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials